

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) CWP No. 9711 of 2016 (O&M)

Enlisted Electrical Contractors Association (Regd.) PETITIONER

Versus

State of Punjab and others RESPONDENTS

(2) CWP No. 16349 of 2016

Enlisted Electrical Contractors Association (Regd.) PETITIONER

Versus

State of Punjab and others RESPONDENTS

(3) CWP No. 23029 of 2016

Enlisted Electrical Contractors Association (Regd.) PETITIONER

Versus

Amritsar Development Authority RESPONDENT

DATE OF DECISION : 23.11.2016

**CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Sanjeev Sharma, Advocate, for the petitioner.

Mr. Alok Jain, Addl. A.G., Punjab.

Mr. Athar Ahmed, Advocate, for respondent No.4.

**Mr. R.S. Khosla, Senior Advocate, with
Mr. Sarvesh Malik, Advocate, for respondent Nos. 5, 12 and 14.**

**Mr. Kirti Kumar, Advocate, for
Mr. Varun Katyal, Advocate, for respondent No.7.**

**Mr. Naresh Gopal Sharma, Advocate, for
Mr. Mehardeep Singh, Advocate, for respondent No.8.**

Mr. V.K. Sandhir, Advocate, for respondent No.9.

Mr. Harit Sharma, Advocate, for respondent No.13.

Ms. Salina Chalana, Advocate, for respondent No.15.

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RAMENDRA JAIN , J.

1. This order shall dispose of the aforesaid three writ petitions, filed by the petitioner, claiming itself to be a registered Association consisting of licensed and enlisted electrical contractors, averring that its members have been successfully working with the Punjab Government for the last 40 years with utmost sincerity and dedication, as the Engineering Departments of the State of Punjab have been issuing separate electrical work tenders sought to be executed by electrical contractors, who are having special qualification and experience to carry out electrical works in the public buildings at drastically lower price, as compared to those quoted by a civil contractor.

2. For brevity, the facts are being taken from CWP No. 9711 of 2016 :-

3. On 16.01.2012, in a meeting presided over by Principal Secretary, Public Works (B & R), State of Punjab, it was decided that the current practice of composite tendering by Chief Engineer, B & R Buildings shall be immediately discontinued. However, to the utter surprise of the petitioner association, in the year 2013, the respondents adopted a tilt shift policy completely contrary to the principles of level playing field and the Engineering Departments of the State of Punjab started issuing composite tenders, instead of issuing separate tenders for each discipline of electrical, civil and public health works. Accordingly, memo dated 05.03.2013 in this regard was issued by the Advisor (Technical) attached to the Chief Minister, Punjab, to the Engineering Departments of the State of Punjab. Feeling aggrieved, the petitioner Association submitted a representation to the

Engineering Departments of the State raising objections qua allotment of electrical works to civil contractors by way of composite tenders, contrary to the judgments of the Bombay High Court and the Kerala High Court. However, Advisor (Technical) to the Chief Minister, Punjab, vide letter dated 18.01.2016, while rejecting the objection of the petitioner Association, reiterated that the instructions dated 05.03.2013 regarding issuance of composite tender works be strictly followed. Thereafter, the petitioner association submitted various representations to the respondents and the government authorities, but all in vain. The respondents in all the three petitions issued various composite tenders for execution of huge civil, electrical, horticulture and various other works.

4. Hence, by way of CWP No. 9711 of 2016, the petitioner association sought quashing of Notice Inviting Tender Nos.2016-17/2, issued by respondent No.12, inviting composite tenders for “Development of parks, Sector 78, 79 and 80, SAS Nagar (Civil + Horticulture + Electricity) including one year maintenance of horticulture work after completion of development”; and Notice Inviting Tenders No. 2016_CEPW_8751_1 for “Construction of Shri Virjamamd Samark at Kartarpur Distt. Jalandhar” issued by respondent No.2, inviting composite works bids from civil contractors.

5. By way of CWP No. 16349 of 2016, the petitioner association sought quashing of Notice Inviting Tender No. 13 dated 27.07.2016 issued by respondent Nos. 1 to 4 for construction of Judicial Court Complex, including 4 Judicial Officers' Residences at Patti, District Tarn Taran; tender No. 73 dated 02.08.2016 for Extension of 1 Chetra Kendar-cum-BFO

Office at Amritsar; tender No. 33 dated 26.07.2016 for construction of Lion Safari in Matewarha Forest, District Ludhiana; tender No. 16 dated 29.07.2016 for construction of boundary wall, gate and rooms for Punjab Institute of Technical Teachers' Training and Research (PITTTR) Centre, PTU Campus at Ladowali Road, Jalandhar; tender No.2 dated 29.07.2016 for construction of stage, toilet Block, Spectator sitting of Badminton Court and Basketball 1HMGSP; tender No. 58/PDA/DE (C/2016/4436-4465) dated 21.07.2016 for construction of roads, providing state, PH and electrical services for development of residential colony in Rajpura Colony, 53 Acre site at Patiala; tender for development of Skill Development Centres in Government schools at village Bassi Jalal, Sansarpur, Dasuya, Bhangala and Handwal, District Hoshiarpur (Group-J-2); and development of old Jail site Jalandhar including construction of road/parking, Prov. W/S, sewerage and electrification works etc., including maintenance for 5 years after one year defect liability period of P.H and electrical works under OUVGL Scheme.

6. By way of CWP No. 23029 of 2016, the petitioner association has sought quashing of Notice Inviting Tender No. ADA/ADA/DE (C)/ASR/2016 dated 10.10.2016, issued by the respondent for development of “Aero City” situated on Amritsar-Ajnala Road (Opposite Village Heir), Amritsar, including all works pertaining to Civil, Public Health, Electricity and Horticulture.

7. Further, in all the three petitions, a direction has been sought to the respondents to continue with the issuance of separate tenders for each discipline of civil, electric and public health works.

8. Learned counsel for the petitioner argued that the electrical work is being done by skilled and specialised contractors having licenses under the Indian Electricity Act, 1956. Therefore, clubbing electrical works with civil and public health works would cause loss to the government, as the costs incurred by the electrical contractors is at least 25% to 30% lower than the civil contractors. Change in the policy of the respondents to issue composite tenders for public works is in violation of fundamental right of the members of the petitioner association to equality and to carry on any occupation, trade and business, as mandated under Articles 14 and 19 (1) (g) of the Constitution of India. Further, the members of the petitioner association would render jobless, by which they were earning their livelihood for the last 40 years, and would be deprived of their fundamental rights of livelihood, as they are now left at the mercy of the civil contractors. Enlistment and issuance of license to the members of the petitioner association by the State of Punjab would become insignificant. Inviting of composite tenders by the respondents would deprive the members of the petitioner association as electrical contractors to enter into contract with the Government independently. Thus, the action of the respondents inviting composite tenders is illegal and arbitrary and the impugned tenders are liable to be quashed. In support of his contentions, learned counsel for the petitioner relied upon a decision of the Bombay High Court in **Aurangabad Electrical Contractors Association, Aurangabad and others Vs. State of Maharashtra**, [2015 (1) Mh. L. J., 182].

9. On the other hand, learned counsel for the respondents refuted

the above submissions of learned counsel for the petitioner, by arguing that the State of Punjab, in its wisdom, decided to start issuing composite tenders, instead of continuing with the policy of issuing separate tenders for each discipline of electrical, civil and public health works, and memo dated 05.03.2013 in this regard was issued by the Advisor (Technical) to the Chief Minister, Punjab, to the Engineering Departments of the State of Punjab, which is a policy decision and cannot be said to be illegal or arbitrary. It is for the State to act in a particular manner, in a given situation. Composite tenders are being invited by discontinuing the earlier policy of inviting separate tenders for electrical, civil and horticulture works, keeping in view the in-coordination among the different contractors, which was always resulting into delay in completion of public projects in a time bound manner.

10. We have given our thoughtful consideration to the submissions made by learned counsel for the parties.

11. Earlier, the Government of Punjab was issuing separate tenders for each discipline of electrical, civil and public health works. However, in the year 2013, while changing this policy, it was decided by the State Government to start issuing composite tenders. Accordingly, composite tenders were invited by the respondents, which have been impugned by the petitioner association, stating that instead of one composite tender for civil, health, horticulture and electrical works, the Government ought to have invited different and distinct tenders for each work. We do not find any substance in the submissions of learned counsel for the petitioner in this regard. Some times, various works of the Government are such, which cannot be bifurcated being co-related to each other. Hence, inviting of

composite tender by the State of Punjab and its undertakings, Corporations and Divisions cannot be said to be illegal and arbitrary. The State Government cannot be directed to execute a work in a particular manner, until and unless the same is malafide or arbitrary or is violative of any provision of the Constitution of India. In this regard, the following observations of the Apex Court in **State of Jharkhand and others Vs. Ashok Kumar Dangi and others**, (2011) 13 SCC 383, are relevant :-

“In framing of the policy, various inputs are required and it is neither desirable nor advisable for a court of law to direct or summarise the Government to adopt a particular policy which it deems fit or proper. It is well settled that the State Government must have liberty and freedom in framing policy. Further, it also cannot be denied that the courts are ill-equipped to deal with competing claims and conflicting interests. Often, the courts do not have the satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the circumstances of the case.”

In the instant cases, issuance of composite tenders by the State Government or its agencies by no stretch of imagination amounts to depriving of the right of livelihood to the members of the petitioner association, because no restriction has been imposed upon them for not executing or doing any work in their individual and private capacity. Even otherwise, there is no prohibition or restriction from joining hands in the composite tenders with the civil contractors. No embargo or rider has been imposed barring them from giving bid as such.

12. There is no merit in the stand of the petitioner association that execution of all types of civil work by way of composite tender would be costlier, putting extra burden on the state exchequer. It is for the State to delve into this issue and petitioner has not been able to substantiate his argument except to raise a bald contention. The decision of the Bombay High Court in **Aurangabad Electrical Contractors Association, Aurangabad and others** (supra) does not support the case of the petitioner (s).

13. In view of the above, all these writ petitions are hereby dismissed, being devoid of any merit.

(RAMENDRA JAIN)
JUDGE

November 23, 2016
ndj

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes